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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 593.

FRANCES PERKINS, Individually and as Secretary of Labor of the United States, et al., *Petitioners*,

v.

LUKENS STEEL COMPANY, a corporation, et al., *Respondents*.

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APPENDIX I

[PUBLIC—No. 846—74TH CONGRESS]
[S. 3055]

AN ACT

To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, ar-

ticles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

SEC. 2. That any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of $10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original

contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

SEC. 3. The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service

laws but subject to the Classification Act of 1923, an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony

relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

SEC. 6. Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected.

SEC. 7. Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associa-

tions, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

SEC. 8. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time, nor the labor provisions of title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes", approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934.

SEC. 9. This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall this Act apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934.

SEPARABILITY CLAUSE

SEC. 10. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 11. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from the effective date of this Act: *Provided, however*, That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Approved, June 30, 1936.

APPENDIX II

No. 504 (Amended as of April 1939).—REGULATIONS PRESCRIBED BY THE SECRETARY OF LABOR UNDER PUBLIC ACT NO. 846, SEVENTY-FOURTH CONGRESS

(SERIES A)

By virtue of the authority vested in the Secretary of Labor by section 4 of the act entitled "An act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes" (Act of June 30, 1936, Public, No. 846, 74th Cong.) and in order to establish uniform procedure under said act, the following Regulations are hereby prescribed:

PART I.—CONTRACT STIPULATIONS

ARTICLE 1 (*Insertion of Stipulations*).—Except as hereinafter directed, in every contract made and entered into by an executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment, with respect to which invitations for bids are issued on or after September 28, 1936, the contracting officer shall cause to be inserted in such invitation or the specifications and in such contract, the following stipulations:

Representations and stipulations pursuant to Public Act No. 846, Seventy-fourth Congress:

(*a*) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(*b*) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the

contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however*, That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(*c*) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

(*d*) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(*e*) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are insanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(*f*) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of $10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due

to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel the same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any adidtional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

(*g*) The contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the act available for inspection by authorized representatives of the Secretary of Labor.

(*h*) The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of $10,000.

ART. 2 (*Statutory Exemptions*).—Inclusion of the stipulations herein enumerated is not required in the following instances:

(*a*) Where the contracting officer is authorized by statute or otherwise to purchase in the open market without advertising for proposals;

(*b*) Where the contract relates to perishables, including dairy, livestock, and nursery products ("perishables" cover products subject to decay or spoilage and not products canned, salted, smoked, or otherwise preserved);

(*c*) Where the contract relates to agricultural or farm

products processed for first sale by the original producers;

(*d*) Where the contract is by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof;

(*e*) Where the contract is with a common carrier for carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line, where published tariff rates are in effect;

(*f*) Where the contract is for the furnishing of service by radio, telephone, telegraph, or cable companies, subject to the Federal Communications Act of 1934.

PART II.—ADMINISTRATIVE REGULATIONS

ART. 101 (*Manufacturer or Regular Dealer*).—A bidder or contractor shall be deemed to be a "manufacturer" or "regular dealer" within the meaning of the stipulation required by section 1 (a) of the act and article 1 (a) of these Regulations if he falls within one of the following categories:

(*a*) A manufacturer is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(*b*) A regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

(1) A regular dealer in lumber and timber products, if a wholesale lumber dealer, may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business: *Provided*, That at least more than 50 percent of his business is such purchase and sale of such materials, supplies, articles, or equipment: and, *Provided further*, That

upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of article 104 of these Regulations requiring compliance with the provisions of the Public Contracts Act.

(2) A regular dealer in coal may be a person who owns, operates, or maintains a place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to users or other trade outlets in the usual course of business in lots of not less than a cargo or railroad carload.

(3) A machine tool dealer may be a person possessing, through contract or agreement with a manufacturer, the responsibility for selling that manufacturer's products, with respect to a specific territory and who is authorized by such manufacturer to offer its products and to negotiate and conclude contracts for the furnishing thereof: *Provided*, That upon all orders to manufacturers for direct shipment to the United States he agrees to insert a notice to the manufacturer to the effect that the supplies are purchased for the United States and that the manufacturer is within the terms of article 104 of these Regulations requiring compliance with the provisions of the Public Contracts Act.

(4) A regular dealer in hay, grain, feed, or straw may be a person who owns, operates, or maintains a store, warehouse, or other place of business in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought for the account of such person and sold to the public in the usual course of business, and whose principal business is such purchase and sale of such materials, supplies, articles, or equipment.

Except as hereinafter provided, every bid received from any bidder who does not fall within one of the foregoing categories shall be rejected by the contracting officer.

Whenever justice and the public interest will be served, bids for a contract or class of contracts will be exempted

from the foregoing requirement by the Secretary of Labor upon the request of the head of the contracting agency or department when accompanied by his finding of fact that it will be so difficult to obtain satisfactory bids for the contract or class of contracts under the stipulated restrictions, that the conduct of Government business will be seriously impaired.

ART. 102 (*Employees Affected*).—The stipulations shall be deemed applicable only to employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment required under the contract and shall not be deemed applicable to office or custodial employees.

ART. 103 (*Overtime*).—Employees engaged in or connected with the manufacture, fabrication, assembling, handling, supervision, or shipment of materials, supplies, articles, or equipment used in the performance of the contract may be employed in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, provided such persons shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor.

Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate or piece rate received by the employee.

If in any 1 week or part thereof an employee is engaged in work covered by the contractor's stipulations, his overtime shall be computed after 8 hours in any 1 day or after 40 hours in any 1 week during which no single daily total of employment may be in excess of 8 hours without payment of the overtime rate.

ART. 104 (*Dealer as Agent of Undisclosed Principal*).—Whenever a dealer, to whom a contract within the act and Regulations has been awarded, causes a manufacturer to deliver directly to the Government the materials, supplies, articles, or equipment required under the con-

tract, such dealer will be deemed the agent of the manufacturer in executing the contract. As the principal of such agent the manufacturer will be deemed to have agreed to the stipulations contained in the contract.

ART. 201 (*Breach of Stipulations*).—Whenever the Department of Labor notifies the head of a contracting agency that a contractor is liable for liquidated damages by reason of a breach of stipulations as provided in section 2 of the act, there shall be withheld from any balance due under the contract such amount as may be necessary to satisfy such liability pending final disposition of the case.

Whenever a final determination of a breach of stipulations is made, the Secretary of Labor will furnish to the contracting agency a copy of the findings and decision with such recommendations as will assist the contracting agency in determining whether or not the contract should be canceled for such breach.

ART. 501 (*Records of Employment*).—Every contractor subject to the provisions of the act and these Regulations shall maintain the following records of employment which shall be available for the inspection and transcription of authorized representatives of the Secretary of Labor:

(*a*) Name, address, sex, and occupation of each employee covered by the contract stipulations.

(*b*) Date of birth of each such employee under 21 years of age.

(*c*) Wage and hour records for each such employees including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract with the number of such contract. Compliance with this subsection shall be deemed complete if wage-and-hour records for all employees in the plant are maintained during the period between the award of any Government contract and the date of delivery of the materials, supplies, articles, or equipment: *Provided*, That where no separate records for employees engaged on Government contracts are main-

tained, it shall be presumed until affirmative proof is present to the contrary that all employees in the plant, from the date of award of any such contract until the date of delivery of the materials, supplies, articles or equipment, were engaged on such Government contract.

Such records shall be kept on file for at least 1 year after the termination of the contract.

ART. 601 (*Requests for Exceptions and Exemptions*).—Request for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired.

All requests for exceptions or exemptions shall be transmitted through the Procurement Division of the Treasury for submission to the Department of Labor for consideration and shall be returned through the Procurement Division.

ART. 602 (*Decisions Concerning Exceptions and Exemptions*).—Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transmitted to the department or agency originating the request, to the Comptroller General, and to the Procurement Division of the Treasury. All such decisions shall be promulgated to all contracting agencies by the Procurement Division of the Treasury.

ART. 603 (*Administrative Exemptions*).—The following classes of contracts have been exempted from the application of article 1 of these Regulations pursuant to the procedure required under section 6 of the act:

(*a*) Contracts for public utility services including electric light and power, water, steam, and gas;

(*b*) Contracts which are to be performed outside the geographic limits of the United States, its territories, and the District of Columbia, except where such performance requires a shipment from within such geographic limits;

(*c*) Contracts covering purchases against the account of a defaulting contractor where the stipulations required herein were not included in the defaulted contract.

ART. 701 (*Definition of "Person"*).—Whenever used in these Regulations, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

ART. 1101 (*Minimum Wages*).—Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the act will be inoperative, as provided in article 1 (b) of these Regulations.

Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers through circular letters of the Procurement Division of the Treasury. Such determinations will be effective upon the dates fixed therein.

ART. 1201 (*Reports of Contracts Awarded*).—Whenever the contracting officer shall award a contract in which the stipulations required under article 1 are operative, he shall furnish the Department of Labor in duplicate on forms provided for this purpose, a statement showing the name of the contracting agency, the purchase order number, the material purchased, the date of award, the contract price, the proposed date of delivery,

the contractor's name and address, and the name and location of the plant or plants fabricating or supplying the subject matter of the contract.

ART. 1202 (*Complaints*).—Whenever any officer or employee of the United States Government or of any agency thereof has any knowledge of or receives any complaint with respect to a breach or violation of the stipulations required under article 1, he shall transmit such complaint according to the usual practice in his department to the Department of Labor together with such other information as he has in his possession.

ART. 1203 (*Other Contracts*).—Nothing in these Regulations shall be construed as impairing the authority possessed by any contracting agency to require labor standards in contracts not covered by this act.

FRANCES PERKINS,
Secretary of Labor.

WASHINGTON, D. C., *September 14, 1936.*

APPENDIX III

The Bacon-Davis Act, as Amended

Act of March 3, 1931, c. 411, 46 Stat. 1494, as amended August 30, 1935, c. 825, 49 Stat. 1101, U. S. Code, title 40, § 276a and Supp. II, title 40, §§ 276a-276a-6.

An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors or subcontractors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account,

the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

Sec. 2. Every contract within the scope of this Act shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

Sec. 3. (a) The Comptroller General of the United States is hereby authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to this Act; and the Comptroller General of the United States is

further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

Sec. 4. This Act shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

Sec. 5. This Act shall take effect thirty days after its passage, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding at the time of the passage of this Act.

Sec. 6. In the event of a national emergency the President is authorized to suspend the provisions of this Act.

Sec. 7. The funds appropriated and made available by the Emergency Relief Appropriation Act of 1935 (Public Resolution Numbered 11, Seventy-fourth Congress), are hereby made available for the fiscal year ending June 30, 1936, to the Department of Labor for expenses of the administration of this Act.

APPENDIX IV

The Walsh Bill

S. 3055 (74th Congress, First Session) as passed by the Senate on August 12, 1935, and referred on August 23, 1935, to the Committee on the Judiciary of the House of Representatives:

AN ACT

To provide conditions for the purchase of supplies and the making of contracts, loans, or grants by the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in connection with all or any purchases of or contracts for construction, articles, materials, supplies, equipment, or services, except professional services, made, extended, or modified on or after the effective date hereof, by any executive department, independent establishment, or other agency or instrumentality of the United States, by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as "agencies of the United States"), there shall be required to be included in the proposal or contract a representation or agreement that all persons employed by the principal contractor in classes of employment described specifically or by reference in the invitation to bid, while engaged in the construction, or the production or furnishing of articles, materials, supplies, equipment, or services, in connection with, or which may be identified as part of the subject matter of, the purchase or contract have since the effective date of this Act been paid not less than such minimum rates of pay and employed not to exceed such maximum hours as on May 26, 1935, were specified in the codes of fair competition and amendments thereto (subject, however, to any stays, exemptions, or exceptions

theretofore issued or granted and then operative under Executive, administrative, or other applicable orders, rules, or regulations) approved pursuant to section 3 (a) and/or section 2 (b) of Title I of the National Industrial Recovery Act approved June 16, 1933, purporting to apply to their respective trades or industries, or as were specified in the President's Reemployment Agreement or approved substitutions therefor, if any, where there were on May 26, 1935, no approved codes of fair competition for such trades or industries, and further that they will be paid not less than such minimum rates of pay and employed not to exceed such maximum hours as shall be designated specifically or by reference in the invitation to bid, and that no person under sixteen years of age and no convict labor has been on or after the effective date hereof or will be employed by the principal contractor in the construction, or the production or furnishing of articles, materials, supplies, equipment, or services, in connection with, or which may be identified as part of the subject matter of, the purchase or contract.

SEC. 1-A. There shall also be included in every contract entered into pursuant to section 1 a covenant that the principal contractor will obtain from every subcontractor or supplier of such articles, materials, supplies, equipment, or services as may be identified as part of the subject matter of the principal contract, a written representation or agreement that all persons employed by such subcontractor or supplier in classes of employment described specifically or by reference in the invitation to bid issued by the agency of the United States, while engaged in carrying out the subcontract, or in the production or furnishing of articles, materials, supplies, equipment, or services, in connection with, or which may be identified as part of the subject matter of, the purchase or contract, have since the effective date of this Act been paid not less than such minimum rates of pay and employed not to exceed such maximum hours as on May 26, 1935, were specified in the codes of fair competition and amendments

thereto (subject, however, to any stays, exemptions, or exceptions theretofore issued or granted and then operative under Executive, administrative, or other applicable orders, rules, or regulations), approved pursuant to section 3 (a) and/or section 2 (b) of Title I of the National Industrial Recovery Act approved June 16, 1933, purporting to apply to their respective trades or industries, or as were specified in the President's Reemployment Agreement or approved substitutions therefor, if any, where there were on May 26, 1935, no approved codes of fair competition for such trades or industries, and that they will be paid not less than such minimum rates of pay and employed not to exceed such maximum hours of labor as shall be described specifically or by reference in such invitations to bid, and that no person under sixteen years of age and no convict labor has been or after the effective date hereof will be employed by such subcontractor or supplier in the carrying out of the subcontract or in the production or furnishing of articles, materials, supplies, equipment, or services in connection with, or which may be identified as part of the subject matter of, the principal contract.

SEC. 2. In all or any contracts or agreements made, extended, or modified hereafter by agencies of the United States for a loan (including Federal Reserve bank industrial loans) or grant of funds or labor to any private person or corporation, there shall be included a representation or agreement that his or its employees engaged in the operations involving the expenditure of funds so loaned or granted or the use of such labor have since the effective date of this Act been paid not less than such minimum rates of pay and employed not to exceed such maximum hours as on May 26, 1935, were specified in the codes of fair competition and amendments thereto (subject, however, to any stays, exemptions, or exceptions theretofore issued or granted and then operative under Executive, administrative, or other applicable orders, rules, or regulations), approved pursuant to section 3 (a)

and/or section 2 (b) of Title I of the National Industrial Recovery Act approved June 16, 1933, purporting to apply to their respective trades or industries, or as were specified in the President's Reemployment Agreement or approved substitutions therefor, if any, where there were on May 26, 1935, no approved codes of fair competition for such trades or industries and that during the expenditure of the funds so loaned or granted or during the utilization of such labor they will be paid not less than the minimum rates of pay and employed not more than the maximum hours of labor as shall be specified in such contract for loan or grant and that no person under sixteen years of age and no convict labor has been on or after the effective date hereof or will be employed in the carrying out of such operations or in the production or furnishing of articles, materials, supplies, equipment, or services in connection therewith; and a further covenant that the borrower or grantee will require a similar written representation or agreement from those with whom it contracts or from whom it makes purchases of articles, materials, supplies, equipment, or services in connection with the carrying out of projects or operations financed wholly or in part with the funds so loaned or granted or in connection with which such labor is used: *Provided*, That this section shall not apply to loans to financial institutions where the funds are commingled with the funds of the borrower and used for general business purposes.

SEC. 2-A. In all or any contracts or agreements made, extended, or modified hereafter, by agencies of the United States for the loan or grant of funds or labor to any State, Territory, possession, including subdivisions and agencies thereof, municipality, and the District of Columbia, there shall be included a representation or agreement by the borrower or grantee, that it will require a representation or agreement from those with whom it contracts or from whom it makes purchases of articles, materials, supplies, equipment, or services in connection with the

projects or operations financed or carried out wholly or in part with funds or labor so loaned or granted to it, that all persons employed by them in classes of employment described specifically or by reference in the contract or agreement for the loan or grant by the United States or any agency thereof, while engaged in the carrying out of the projects or operations, or in the production or furnishing of articles, materials, supplies, equipment, or services which shall be used in connection therewith, have since the effective date of this Act been paid not less than such minimum rates of pay and employed not to exceed such maximum hours as on May 26, 1935, were specified in the codes of fair competition and amendments thereto (subject, however, to any stays, exemptions, or exceptions thereto issued or granted and then operative under Executive, administrative, or other applicable orders, rules, or regulations), approved pursuant to section 3 (a) and/or section 2 (b) of Title I of the National Industrial Recovery Act approved June 16, 1933, purporting to apply to their respective trades or industries, or as were specified in the President's Reemployment Agreement or approved substitutions therefor, if any, where there were on May 26, 1935, no approved codes of fair competition for such trades or industries, and will be paid not less than such minimum rates of pay and employed not to exceed such maximum hours of labor as shall be designated specifically or by reference in such contract or agreement for loan or grant, and that no person under sixteen years of age and no convict labor has been on or after the effective date hereof or will be employed by them in the carrying out of such projects or operations or in the production of articles, materials, or supplies or the furnishing of services in connection therewith: *Provided, however,* That where any borrower or grantee of funds or labor directly carries out the projects or operations wholly or in part with the funds or labor so loaned or grant to it, then, and in that event, all persons in classes of employment described specifically or by reference in the contract or agreement for the loan or grant,

especially employed by the borrower or grantee to carry out such projects or operations, shall be paid not less than such minimum rates of pay and employed not to exceed such maximum hours of labor as shall be designated specifically or by reference in such contract or agreement for loan or grant, and no person under sixteen years of age and no convict labor shall be employed in the carrying out of such projects or operations.

SEC. 2-B. There shall also be included in every contract or agreement for loan or grant entered into pursuant to sections 2 and 2-A a covenant that the principal contractor of the borrower or grantee will be required to obtain from every subcontractor or supplier of articles, materials, supplies, equipment, or services which may be identified as part of the subject matter of the principal contract, a written representation or agreement that all persons employed by such subcontractor or supplier in classes of employment described specifically or by reference in the contract or agreement for loan or grant while engaged in carrying out the subcontracts, or in the production or furnishing of articles, materials, supplies, equipment, or services in connection with, or which may be identified as part of the subject matter of, the principal contract, have since the effective date of this Act been paid not less than such minimum rates of pay and employed not to exceed such maximum hours as on May 26, 1935, were specified in the codes of fair competition and amendments thereto (subject, however, to any stays, exemptions, or exceptions, theretofore issued or granted and then operative under Executive, administrative, or other applicable orders, rules, or regulations), approved pursuant to section 3 (a) and/or section 2 (b) of Title I of the National Industrial Recovery Act approved June 16, 1933, purporting to apply to their respective trades or industries, or as were specified in the President's Reemployment Agreement or approved substitutions therefor, if any, where there were on May 26, 1935, no approved codes of fair competition for such trades or industries,

and will be paid not less than such minimum rates of pay and employed not to exceed such maximum hours of labor as shall be designated specifically or by reference in such contract or agreement for loan or grant, and that no person under sixteen years of age and no convict labor has been on or after the effective date hereof or will be employed by such subcontractor or supplier in carrying out the subcontract or in the production or furnishing of articles, materials, supplies, equipment, or services as may be identified as part of the subject matter of the principal contract.

SEC. 3. Every representation or agreement made pursuant to the provisions of this Act by a principal contractor, borrower, grantee, subcontractor, or supplier, shall provide:

(1) That any breach or violation thereof shall render the party responsible therefor liable to the United States as and for liquidated damages in—

(a) a sum equal to twice the difference between the amount required to be paid to employees, including the amount required to be paid for overtime in excess of the maximum hours designated in the invitation for bids, and the amount actually paid;

(b) the sum of $10 per day with respect to each person under sixteen years of age employed in violation of any representation or agreement.

(2) That the exaction or acceptance of any refunds ("kick-backs") of wages in any form whatsoever, from employees shall render the party exacting or accepting same liable to the United States as and for liquidated damages in a sum equal to five times the amount of such refund: *Provided*, That allowance shall be made for any penalty imposed on account of the same act or transaction and collected under any other Act of Congress;

(3) That any breach or violation thereof shall entitle the other contracting party to cancel the contract with respect to which the representation or agreement is made,

and to make open-market purchases or have the work completed, charging any additional cost to the party responsible for the breach or violation;

(4) That the principal contractor shall, if directed by the contracting officer upon the recommendation of the President, cancel any subcontract for a breach by the subcontractor of his written representation or agreement, and failure on the part of the principal contractor so to cancel shall subject his contract to cancelation;

(5) That the representatives of any agency charged with the administration of this Act may enter upon the premises of any borrower, grantee, contractor, subcontractor, or supplier for the purpose of obtaining information necessary for the administration of the provisions of this Act and that the borrower, grantee, contractor, subcontractor, or supplier will furnish upon request, duly authenticated or certified copies of his pay roll and such other relevant records as may be requested by any duly authorized representative of any agency charged with administration of this Act.

Sec. 4. Any sums due to the United States by virtue of the foregoing section if not withheld from any amounts due upon any contracts may be recovered in suits brought in the name of the United States by the Attorney General. Sums withheld or recovered shall be held in a special deposit account, and shall be applied, on order of the President to payment of deficiency in wages to employees who have been paid less than the minimum rates of pay and on account of whose services such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of the notification to the supplier or contractor of the withholding or recovery by the United States of such sums: *Provided, however*, That nothing herein contained shall authorize or permit any such claims to be prosecuted against the United States or any agency thereof, at law or otherwise, to obtain or recover any funds which are collected, collectible,

deducted, or deductible under the provisions of this Act.

Sec. 5. Upon his own motion, or on complaint of a breach or violation of a representation, agreement, or covenant made as herein provided, the President shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal by any person to obey such an order, any District Court of the United States or of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the President, shall have jurisdiction to issue to such person an order requiring such person to appear before the President, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and the President shall have the power to make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the evidence, shall be conclusive upon review by the courts, and the President shall have the power, and is hereby authorized, to make such decisions based upon findings of fact as are deemed to be necessary to enforce the provisions of this Act.

Sec. 6. The President may make exceptions in specific cases or otherwise under the provisions of this Act whenever such action shall be recommended by an agency of the United States and when justice or public interest will be served thereby and upon the joint recommendation of the governmental agency and the contractor, may modify the terms of an existing contract respecting minimum

rates of pay and maximum hours of labor as may be found necessary and proper in the public interest or to prevent injustice or undue hardship and the President may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act on the extent of the application of this Act to contractors, subcontractors, suppliers, borrowers, or grantees as hereinbefore described.

Sec. 7. Any bid or proposal received by an agency of the United States may be rejected when it has been previously determined pursuant to the provisions of this Act, that the person submitting the same has previously breached any of the covenants required by this Act and that the acceptance of such bid or proposal would not be in the public interest.

Sec. 8. The specific minimum wages and maximum hours specified or referred to in any invitation to bid or contract or agreement for loan or grant shall be determined by the President: *Provided, however,* That minimum wages and maximum hours fixed under this Act shall be such as are fair and reasonable taking into account the following primary standards:

(a) The cost of living;

(b) The standards for the same class of labor in the same trade or industry in the same locality;

(c) The standards in effect for such class of labor during the year 1934; and

(d) The minimum rates of pay and maximum hours of labor specified in the applicable codes of fair competition and approved amendments thereto, if any, approved pursuant to section 3(a) and/or section 2(b) of Title I of the National Industrial Recovery Act approved June 16, 1933, purporting to apply to the respective trades or industries, or where there were on May 26, 1935, no approved codes of fair competition for such trades or industries, then those minimum rates of pay and maxi-

mum hours specified in the President's Reemployment Agreement or approved substitutions therefor, if any: *Provided further*, That the President shall set a rate for any overtime in excess of the maximum hours designated in the specification or invitation to bid.

Sec. 9. (a) This Act shall take effect thirty days after its approval: *Provided, however*, That—

(b) Where permitted by the terms of such contracts, this Act shall be applicable to contracts entered into prior to its effective date: *Provided*, That in such cases the requirements as to the minimum rates of pay, maximum hours of labor, and minimum age of employees shall be those prescribed therefor in accordance with the foregoing provisions of this Act, whether such requirements are prescribed before or after such contract was entered into: *Provided further*, That such contracts shall be subject to modification as to compensation upon proof by the contractor of excess cost occasioned solely by compliance with such requirements.

(c) Where proposals have been invited prior to the effective date of this Act and bids are submitted thereon containing no provisions with respect to requirements as to minimum rates of pay, maximum hours of labor, or minimum age of employees, contracts may be executed according to such proposals.

(d) Where proposals have been invited prior to the effective date of this Act, no bid submitted in response thereto if otherwise valid and acceptable, shall be rejected because made subject to the provisions of any code or codes of fair competition or the President's Reemployment Agreement or applicable approved substitutions therefor, if any, or any related requirements prescribed by Executive Order Numbered 6246 of August 10, 1933, as modified by Executive Order Numbered 6646 of March 14, 1934, if the bidder, with the assent of his surety, shall agree in writing that the contract, if entered into, shall, in lieu of said code provisions or other related requirements prescribed by said Executive orders, be sub-

ject to the provisions of this Act in the same manner and to the same extent as contracts made subject thereto by the provisions of this Act: *Provided*, That in such cases the compensation to be provided for in the contract shall be reduced or increased from that stated in such bid in the amount and to the extent that the contracting officer shall find the cost of performing the contract will be reduced or increased solely by reason of compliance by the contractor, subcontractor, or supplier with the requirements of such substituted provisions.

(e) Where proposals have been invited prior to the effective date of this Act and all bids submitted in response thereto have been rejected for the sole reason that same were made subject to the provisions of any code or codes of fair competition and amendments thereto, if any, or the President's Reemployment Agreement or applicable approved substitutions therefor, if any, or any related requirements prescribed by Executive Order Numbered 6246 of August 10, 1933, as modified by Executive Order Numbered 6646 of March 14, 1934, and no invitation for further bids has been issued, if the bidder, whose bid would otherwise have been accepted, with the assent of his surety, shall agree in writing that the contract, if entered into, shall be subject to the provisions of this Act in the same manner and to the same extent as contracts made subject thereto by the provisions of this Act, contracts may, in the discretion of the officer or officers otherwise authorized to accept the bid, be executed according to such proposals: *Provided*, That in such cases the compensation to be provided for in the contract shall be reduced or increased from that stated in such bid in the amount and to the extent that the contracting officer shall find the cost of performing the contract will be reduced or increased solely by reason of compliance by the contractor with the requirements of such substituted provisions.

Sec. 10. The provisions of this Act shall be carried out under the direction of the President and in accordance

with such orders, rules, and regulations as he may issue for that purpose. The President is hereby authorized to establish such agency or agencies and to appoint, subject to the provisions of the civil-service laws, such officers and employees, and without regard to the civil-service laws semijudicial and administrative officers, attorneys, and examiners, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary; to prescribe their authorities, duties, responsibilities, and tenure; and, in accordance with provisions of the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed. The President may authorize any of his functions under this Act to be performed by any agency or agencies now existing or hereafter established within the Government. The President, or any member of any Board, or any individual upon whom is delegated under section 11 the authority to administer this section of this Act, and any examiner duly authorized by such Board or individual is authorized to administer oaths to such witnesses. The funds appropriated and made available pursuant to section 220 of the National Industrial Recovery Act by the Fourth Deficiency Act, fiscal year 1933, and by the Emergency Relief Appropriation Act of 1935, are hereby made available for the expenses of administration of this Act.

Sec. 11. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the "Buy American Act"), nor shall the provisions of this Act be construed as authorizing the payment of wages below the standards required by "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March

3, 1931 (commonly known as the "Bacon-Davis Act"), as amended from time to time, with respect to contracts which are also within the provisions of such Act as amended from time to time, nor the wage and hour provisions of title II of the National Industrial Recovery Act approved June 16, 1933, as extended.

Sec. 12. Nothing in this Act shall be construed to apply to agricultural or farm products processed for first sale by the original producer nor to loans made by any governmental agency to associations of producers as defined in the Farm Credit Act of 1935 nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to loans made by the Governor of the Farm Credit Administration, or by any agency, corporation, or institution under the supervision or control of the Farm Credit Administration.

SEPARABILITY CLAUSE

Sec. 13. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Sec. 14. This Act shall remain in force for two years after the date it becomes effective.

Passed the Senate July 29 (calendar day, August 12), 1935.

Attest: EDWIN A. HALSEY,
Secretary.

APPENDIX V

The Healey Bill

H. R. 11554 (74th Congress, Second Session) as introduced in the House on March 2, 1936, and referred to the Committee on the Judiciary of the House:

A BILL, To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any purchases of or contracts for construction, articles, materials, supplies, equipment, or services, except professional services, in an amount exceeding $2,000 by any executive department, independent establishment, or other agency or instrumentality of the United States, by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being heinafter designated as agencies of the United States), there shall be required to be included in the proposal or contract a representation or agreement that all persons hereafter employed by the principal contractor in classes of employment described specifically or by reference in the invitation to bid, while engaged in the construction, or the production or furnishing of articles, materials, supplies, equipment or services, in connection with, or which may be identified as part of the subject matter of, the purchase or contract will be paid not less than such minimum rates of pay and employed not to exceed such maximum hours as shall be designated specifically or by reference in the invitation to bid, and that no person under sixteen years of age and no convict labor will be employed by the principal contractor in the construction, or the production or furnishing of articles, materials, supplies, equipment, or services, in connection with, or which may be identified as part of the subject matter of, the purchase or contract.

SEC. 2. Every purchase or subcontract by the principal contractor or by the person engaged in the performance or the productive operations under the principal contract for construction, articles, materials, supplies, equipment, or services (except professional services) with respect to the subject matter of the principal purchase or contract shall be deemed to contain the representations or agreements incorporated therein, and any breach or violation thereof shall be deemed a breach or violation by the employer directly responsible therefor, and shall not subject the principal contractor to any of the provisions of section 3 (1) or section 3 (2), provided he has given actual notice of such representations or agreements to such employer.

SEC. 3. Every representation or agreement made pursuant to the provisions of this Act by a principal contractor, subcontractor, or supplier, shall provide:

(1) That any breach or violation thereof shall render the party responsible therefor liable to the United States as and for liquidated damages in—

(a) a sum equal to twice the difference between the amount required to be paid to employees, including the amount required to be paid for overtime in excess of the maximum hours designated in the invitation for bids, and the amount actually paid;

(b) the sum of $10 per day with respect to each person under sixteen years of age employed in violation of any representation or agreement.

(2) That the exaction or acceptance of any refunds or kick-backs of wages, in any form whatsoever, from employees shall render the party exacting or accepting same liable to the United States as and for liquidated damages in a sum equal to five times the amount of such refund: *Provided*, That allowance shall be made for any penalty imposed on account of the same act or transaction and collected under any other Act of Congress;

(3) That any breach or violation thereof shall entitle the other contracting party to cancel the contract with re-

spect to which the representation or agreement is made, and to make open-market purchases or have the work completed, charging any additional cost to the party responsible for the breach of violation;

(4) That the principal contractor shall, if directed by the contracting officer upon the recommendation of the Secretary of Labor, cancel any subcontract for a breach by the subcontractor of his representation or agreement, and failure on the part of the principal contractor so to cancel shall subject his contract to cancelation.

SEC. 4. Any sums due to the United States by virtue of the foregoing section may be withheld from any amounts due upon any contracts or may be recovered in suits brought in the name of the United States by the Attorney General. Sums withheld or recovered shall be held in a special deposit account, and shall be applied, on order of the Secretary of Labor, to payment of deficiency in wages to employees who have been paid less than the minimum rates of pay and on account of whose services such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of the notification to the supplier or contractor of the withholding or recovery by the United States of such sums.

SEC. 5. Any bid or proposal received by an agency of the United States may be rejected when it has been determined, pursuant to the provisions of this Act, that the person submitting the same has in the performance of any other contract breached any of the agreements or representations required by this Act.

SEC. 6. The Secretary of Labor is hereby authorized to create in the Department of Labor a unit for administering the provisions of this Act, and without regard to the civil-service laws, but in accordance with the Classification Act of 1923, as amended, to appoint and to fix the compensation of such officers, attorneys, examiners, and to appoint such other employees with regard to existing

laws applicable to the employment and compensation of employees of the United States and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary to discharge the duties of said unit, and to prescribe rules and regulations with respect to their duties.

SEC. 7. Upon his own motion, or on complaint of a breach or violation of a representation, agreement, or covenant made as herein provided, the Secretary of Labor or representative designated by him shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal by any person to obey such an order, any District Court of the United States or of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before the Secretary or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and the Secretary shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the evidence, shall be conclusive upon review by the courts; and the Secretary shall have the power, and is hereby authorized, to make such decisions based upon findings of fact as are deemed to be necessary to enforce the provisions of this Act.

SEC. 8. The Secretary of Labor may make exceptions

respecting minimum rates of pay and maximum hours of labor in specific cases or otherwise under the provisions of this Act whenever such action shall be recommended by an agency of the United States and when justice or public interest will be served thereby. Upon the joint recommendation of the governmental agency and the contractor, the Secretary may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as may be found necessary and proper in the public interest or to prevent injustice or undue hardship. The Secretary may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, subcontractors, or suppliers, as hereinbefore described.

SEC. 9. The specific minimum wages and maximum hours specified or referred to in any proposal or contract shall be determined by the Secretary of Labor: *Provided, however*, That minimum wages fixed under this Act shall be such wages as are fairly and reasonably commensurate with the value of the service or class of service rendered. In establishing a minimum wage for any service or class of service under this Act the Secretary without being bound by any technical rules of evidence or procedure (1) may take into account all relevant circumstances affecting the value of the service or class of service rendered, (2) may be guided by like considerations as would guide a court in a suit for the reasonable value for services rendered where services are rendered at the request of an employer without contract at to the amount of the wage to be paid, and (3) may consider the wages paid for work of like or comparable character by employers who voluntarily maintain minimum fair-wage standards; and in establishing maximum hours may take into account (1) the prevailing weekly total of hours for such class of services in the year 1934, (2) the health and safety of

employees, (3) the amount of unemployment in the particular industries, (4) the effect of excessive hours of labor upon the quality of goods and services furnished the United States: Provided further, That the Secretary shall set a rate for any overtime in excess of the maximum hours designated in the specification or invitation to bid. Such rate shall be not less than one and one-half times the basic hourly rate received by the employee affected.

SEC. 10. Funds appropriated and made available by the Emergency Relief Appropriation Act of 1935 (Public Resolution Numbered 11) are hereby made available for the fiscal year ending June 30, 1937, to the Department of Labor for expenses of the administration of this Act.

SEC. 11. When used in this Act, the term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

SEC. 12. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of this Act be construed as authorizing the payment of wages below the standards required by "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time, with respect to contracts which are also within the provisions of such Act as amended from time to time, nor the wage and hour provisions of title II of the National Industrial Recovery Act approved June 16, 1933, as extended.

SEC. 13. Nothing in this Act shall be construed to

apply to agricultural or farm products processed for first sale by the original producer nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to common carriers subject to the Interstate Commerce Act and to the Railway Labor Act.

SEPARABILITY CLAUSE

SEC. 14. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 15. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after thirty days from the effective date of this Act.

APPENDIX VI

There are set forth in this Appendix VI excerpts from Acts of Congress, other than the Public Contracts Act, employing the term "locality" to denote the area within which prevailing wages are to be determined, and which term as so employed is conceded by petitioners (Br., p. 95) to mean "a small geographical area". For ease of reference, the phrase in which such term occurs in each of the following excerpts is italicized.

Emergency Relief Appropriation Act of 1937 (50 Stat. 352, 354):

That * * * there is hereby appropriated * * * $1,500,000,000 * * * : Provided, That this appropriation shall be available for the following classes of public projects, * * * (a) assistance for educational, professional and self-help, and clerical persons and women's projects, * * *.

* * * * * *

Sec. 2. In carrying out the purposes of the foregoing appropriation the President is authorized (a) to prescribe such rules and regulations as may be necessary and to utilize agencies within the Government and to empower such agencies to prescribe rules and regulations to carry out the functions delegated thereto by the President: Provided, That the rates of pay for persons engaged upon projects under the foregoing appropriation shall be not less than the *prevailing rates of pay for work of a similar nature in the same locality* as determined by the Works Progress Administration with the approval of the President; * * *.

Emergency Relief Appropriation Act of 1938 (52 Stat. 809, 812):

Section 1. That * * * there is hereby appropriated * * * :

(1) To the Works Progress Administration, $1,425,-

000,000, together with the balances of allocations heretofore made or hereafter to be made * * *, and such amounts shall be available for * * * (d) the following types of public projects, * * *. (3) educational, professional, clerical, cultural, recreational, production, service, including training for domestic service, and miscellaneous non-construction projects * * *.

* * * * * *

Sec. 9. The rates of pay for persons engaged upon projects under the appropriations in this title shall be not less than the *prevailing rates of pay for work of a similar nature in the same locality* as determined by the Works Progress Administration: Provided, That if minimum rates of pay for persons employed by private employers in any occupation are established by or pursuant to the authority conferred by any Labor Standards Act enacted at the third session of the Seventy-fifth Congress, not less than the minimum rates of pay so established shall be paid to persons in similar occupations in the same locality employed on projects under the appropriation in subsection one of section one of this title.

Act of September 1, 1937 (50 Stat. 888, 897), creating the United States Housing Authority:

* * * * * *

Sec. 16. In order to protect labor standards—

(1) The provisions of the Act of August 30, 1935, entitled "An Act to amend the Act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and sub-contractors on public buildings" (49 Stat. 1011), and of the Act of August 24, 1935, entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing

material and labor for the construction, alteration, or repair of said public buildings or public work" (U. S. C., 1934 edition, Supp. II, title 40, secs. 270a to 270d, inclusive), shall apply to contracts in connection with the development or administration of Federal projects and the furnishing of materials and labor for such projects: *Provided*, That suits shall be brought in the name of the Authority and that the Authority shall itself perform the duties prescribed by section 3 (a) of the Act of August 30, 1935, and section 3 of the Act of August 24, 1935.

(2) Any contract for loans, annual contributions, capital grants, sale, or lease pursuant to this Act shall contain a provision requiring that the *wages or fees prevailing in the locality*, as determined or adopted (subsequent to a determination under applicable State or local law) by the Authority, shall be paid to all architects, technical engineers, draftsmen, technicians, laborers, and mechanics employed in the development or administration of the low-rent housing or slum-clearance project involved; and the Authority may require certification as to compliance with the provisions of this paragraph prior to making any payment under such contract.

Section 212 (a) of the National Housing Act, as added to said Act by Section 14 of the Act of June 3, 1939 (53 Stat. 807):

Sec. 212. (a) The Administrator shall not insure under section 207 or section 210 of this title, pursuant to any application for insurance filed subsequent to the effective date of this section, a mortgage which covers property on which there is or is to be located a dwelling or dwellings, or a housing project, the construction of which was or is to be commenced subsequent to such date, unless the principal contractor files a certificate or certificates (at such times, in course of construction or otherwise, as the Administrator may prescribe) certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or the housing project involved have

been paid not less than the *wages prevailing in the locality in which the work was performed* for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary af Labor prior to the beginning of construction and after the date of the filing of the application for insurance.

APPENDIX VII

WEBSTER'S NEW INTERNATIONAL DICTIONARY

(Second Ed., Unabridged, 1939)

locality • • •

1. Fact or state of being local.
2. Limitation to a district or place; as, *locality* of trial.
3. Position; situation; a place; a spot; esp., a geographical place or situation, as of a mineral or plant.
4. *Pl.* Local features or peculiarities. *Rare.*
5. Space or place reference; localization in space; as, the sense of *locality*.
6. *Phrenol.* • • •
7. *Scots Law.* • • •

Syn.—See HABITAT.

habitat, *n.*

1. *Biol.* The natural abode of a plant or animal, esp. the particular location where it normally grows or lives, as the desert, seacoast, etc.
2. Place where anything is commonly found.

Syn.—HABITAT, RANGE, LOCALITY, STATION. In *Biol.*, *habitat* refers especially to the kind of environment in which a plant or animal is normally found, as opp. to *range*, which denotes the geographical region throughout which it is distributed. *Locality* indicates a circumscribed area of its occurrence within the range; and *station*, in its usual restricted sense, refers to the exact spot at which a given specimen or species is found.

local, *adj*:

1. Characterized by, or relating to, place, or position

in space; having a definite spatial form; as a *local* body or presence; a *local* heaven and hell.

2. Characterized by, relating to, or occupying, a particular place or places; characteristic of, or confined to, a particular place or places, not general or widespread; as *local* politics, celebrities; a *local* government.
3. Hence, relating to what is local; not broad or general; as, a person of *local* ideas; a *local* point of view.

UNIVERSAL DICTIONARY OF THE ENGLISH LANGUAGE (1932)

locality, *n.* local (I.) & -ity.

1. Position or place in which a thing exists.
2. Place, district, neighborhood. Phr. * * *.

FUNK & WAGNALLS NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE (1937)

locality

1. A definite spot or region in any part or space; point; site; neighborhood; especially, a geographical position.
2. Restriction to a particular place or district; locale.
3. The state of having a location; the condition of being assigned or belonging to a particular place.

MacMILLAN'S MODERN DICTIONARY (1938)

local, *adj.*

of or belonging to a particular place; confined to a particular locality; not broad or widespread; *n.* train that provides service for a particular district; accommodation train, as distinguished from a *through* train; item of news of only local interest.

locale, *n.* particular place, esp. with reference to some characteristic feature or peculiarity. **local-ism**, *n.*, state of being local; attachment to a place; form of speech or custom peculiar to a district; **local-ist**, *n.* **local-istic**, *adj.* **locality**, *n.* particular place or district; geographical position. **local-ization**, *n.* **local-ize**, **-izing**, *v. t.* fix in or connect with a particular place; restrict to a certain locality; make local in character. * * *.

NEW CENTURY DICTIONARY (1929)

locality * * *

The state or fact of being local, or having place, or being in a place; also, the place in which a thing is or occurs, esp. the geographical place or situation (as, the *locality* of a mineral; the *locality* of a crime); a place, spot, or district, with or without reference to things or persons in it (as, "Feeling unsafe * * * in this *locality*, their colonels had led them into the new town', motley's "Duth Republic," v. 3); in phren., * * *.

local * * *

Pertaining to or characterized by place, or position in space (as, *local* situation; "The poet's pen * * * gives to airy nothing A *local* habitation and a name," Shakespeare's "Midsummer Night's Dream" v. i. 17); also, pertaining to, characteristic of, or restricted to a particular place or particular places (as *local* names; a *local* custom; "The whole neighborhood abounds with *local* tales, haunted spots, and twilight superstitions," Irving's "Sketch-Book," "Sleepy Hollow); also, pertaining to a town or a small district as distinguished from the entire state or country (as, *local* government; *local* option: see phrases following); also, pertaining to or affecting a particular part or particular parts, as of a system or object (as a *local* disease, one which affects a particular part or organ of the body). * * *

MURRAY NEW ENGLISH DICTIONARY (OXFORD)

Locality.

1. The fact or quality of having a place, that is, of having position in space. [Examples of usage omitted.]
2. The fact of being local, in the sense of belonging to a particular spot. Also *pl.* local characteristics, feelings, or prejudices. *Obs.* [Examples of usage omitted.]
3. *pl.* The features or surroundings of a particular place. [Examples of usage omitted.]
4. a. The situation or position of an object; the place in which it is, or is to be found; *esp.* geographical place or situation, e. g. of a plant or mineral. [Examples of usage omitted.]

   b. A place or district, of undefined extent, considered as the site occupied by certain persons or things, or as the scene of certain activities. [Examples of usage omitted.]

AMERICAN ENCYCLOPEDIC DICTIONARY (1894)

locality.

I. *Ordinary language*:

1. Existence in a place, or in a certain portion of space.
2. Limitation to a certain place or locality; as, the *locality* of a trial.
3. Position, situation, place; geographical position or situation.
4. A spot, a place.

II. *Technically*:

1. *Phren.*: * * *
2. *Scots Law*: * * *

local.

A. ***As adjective*:**

1: Of or pertaining to a particular place or spot. [Example of usage omitted.]

2. Limited or confined to one particular place or district.

3. Situated in a particular place; having place or position.

SUPREME COURT OF THE UNITED STATES.

No. 593.—October Term, 1939.

Frances Perkins, Individually and as Secretary of Labor of the United States, et al., Petitioners,
vs.
Lukens Steel Company, Alan Wood Steel Company, South Chester Tube Company, et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[April 29, 1940.]

Mr. Justice Black delivered the opinion of the Court.

In exercise of its authority to determine conditions under which purchases of Government supplies shall be made, Congress passed the Public Contracts Act of June 30, 1936.[1] By virtue of that Act, sellers must agree to pay employees engaged in producing goods so purchased "not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which . . . the supplies . . . are to be manufactured or furnished under said contract." The Court of Appeals for the District of Columbia has held that the Secretary erroneously construed the term "locality" to include a larger geographical area than the Act contemplates, and has ordered six Members of the Cabinet including the Secretary of Labor, the Director of Procurement and all other officials responsible for purchases necessary in the operation of the Federal Government, not to abide by or give effect to the wage determination made by the Secretary for the iron and steel industry either as to the complaining companies or any others. In this vital industry, by action of the Court of Appeals for the District of Columbia, the Act has been suspended and inoperative for more than a year.

We must, therefore, decide whether a Federal court, upon complaint of individual iron and steel manufacturers, may restrain the

[1] 49 Stat. 2036.

Secretary and officials who do the Government's purchasing from carrying out an administrative wage determination by the Secretary, not merely as applied to parties before the Court, but as to all other manufacturers in this entire nation-wide industry. Involving, as it does, the marking of boundaries of permissible judicial inquiry into administrative and executive responsibilities, this problem can best be understood against the background of what took place before the Court of Appeals for the District acted:

July 11, 1938, all the iron and steel companies in the United States were given notice that the Secretary contemplated proceedings for determining the minimum prevailing wage for their industry. On the 25th and 26th of that month, hearings were had before the Public Contracts Board also functioning under the Act. Many companies, and all of those involved here, were represented in the hearings. Companies from the entire United States filed briefs and submitted information and suggestions, and these producers who are parties here had notice of and actively participated in the various stages of the proceedings. After the hearing, time for filing of briefs was allowed. Following investigation of testimony, exhibits, letters, telegrams, briefs, data from the Bureau of Labor Statistics, and arguments of representatives of both labor and industry itself, the Board, October 27, 1938, made its findings of fact, conclusions and recommendations: (a) Accepting recommendations of industry and labor, the Board adopted—with minor exceptions—the definition of the steel industry previously in effect under the National Industrial Recovery Act; (b), "the base rates paid to the workers classified as common laborers" was utilized as a basis for finding the minimum wage prevailing in the industry and a common laborer was defined as "one who performs physical or manual labor of a general character and simple nature, requiring no special training, judgment nor skill"; (c), the view that municipalities be treated as the geographical limit of a "locality" and that different minimum prevailing wage standards be adopted for small as distinguished from larger companies, was rejected. The Board pointed out that "the main channels of trade in the industry take their course far beyond the confines of local producing areas"; that "conventional measurement of miles on the map to outline the marketing areas of the iron and steel producers" was unsuitable; that "geographic location does not limit the efforts of iron and steel manu-

facturers to secure Government business"; that "the workers being paid wages below the base rates are employed in large, medium and small size companies and in plants located in all parts of the country"; and that in fixing a "locality" all these factors as well as geographic and economic considerations were relevant.

The majority of the Board suggested two localities, one for the Southern States and another for the remainder of the steel producing States. One member disagreed and insisted upon four localities throughout the nation, but noted that "the Board is agreed on all the essential facts before it in the case." He recognized that "the law. . . . permits the division of the country into localities for the purpose of determining minimum wages. No rule is laid down to define the extent of any localities . . . . . A too minute concept of locality would obviously nullify the law, for each plant must necessarily occupy a different locale or site from every other. To reduce the interpretation of locality to its most minute point would be to find a minimum wage prevailing in each plant . . . . When we depart from this interpretation we are immediately thrown upon judgment. . . . Obviously we must look for wage patterns or uniformities. . . . Again judgment must be relied upon for the answer." Excepting to the Board's recommendations, the companies now before this Court urged that the Secretary make a finding of minimum prevailing wages with "locality" given the connotation of a subdivision of the respective States as originally provided in the Bacon-Davis Act.[2]

On December 20, 1938, the Assistant Secretary of Labor, acting for the Secretary, heard arguments and received briefs both from industry and labor organizations. He did not adopt the recommendations of the Board in full, but instead divided the industry of the entire country into six "localities", proceeding, however, upon the view that to construe "locality" to mean small political divisions of the States, as the Bacon-Davis Act had done in express terms, would render "effective administration of the Act . . . . almost impossible." It was pointed out that "this narrowly restricted construction of the word 'locality' . . . is contrary to the administrative construction consistently adhered to by the Secretary of Labor in the administration of the Act", and that while Congress had closely followed the language of the Davis-Bacon Act in some

[2] 46 Stat. 1494.

respects, it had "carefully avoided the use of the more narrowly restrictive language of "city, town, village or other civil subdivision." In the twenty-two preceding wage determinations under this Act the Secretary's administrative construction of the term had been—with a sole exception—that of geographic areas no smaller than those determined for the steel industry.[3] The determination in question was made January 16, 1939, but was not made operative until March 1, 1939, "in order that industry may make necessary readjustments to comply with the decision."

In their bill for an injunction and a declaratory judgment, these seven producers of iron and steel (respondents here) sought to enjoin as individuals and in their official capacities, the Secretaries of the Labor, Treasury, War, Navy, and Interior Departments, the Postmaster General, the Director of Procurement of the Treasury Department, the Assistant Secretary of Labor, and the Administrator of the Division of Public Contracts of the Department of Labor and their "officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them, or any of them, and their successors in office and each of them, and their officers," etc. The seven companies named as complainants by the bill did not merely pray relief for themselves against the Secretary's wage determination but insisted that all these Government officials be restrained from requiring the statutory stipulation as to minimum wages in contracts with any other steel and iron manufacturers throughout the United States.

The District Court declined to interfere so sweepingly with the administration of the Act, even in the temporary restraining order which it granted. Its order ran only against the Secretaries of Labor and the Navy, and specifically limited its benefits to but three of the complaining companies. Recitals in the order indicate that only the Secretary of the Navy had actually solicited bids and that only those three companies were "desirous of bidding." After hearing, this order was dissolved and the Court granted a motion to dismiss the complaint for lack of jurisdiction, inadequacy of the complaint, lack of standing to sue, and because the suit was one against the United States without its consent.[4] A stay pending appeal was denied by the

[3] 2 Fed. Reg. 233, 1333, 1335, 1336, 1337, 1338, 1339, 2960, 2976; 3 Fed. Reg. 64, 224, 257, 889, 1613, 895, 901, 1612, 1153, 2371, 2370, 2537, 3043; 4 Fed. Reg. 4005.

[4] The District Court's judgment was rendered without opinion.

District Court, but the Court of Appeals for the District of Columbia, Justice Edgerton dissenting, by temporary injunction granted the sweeping prayer that all the Government officials and agents designated in the bill be restrained from continuing in effect the Determination made by the Secretary of Labor. By motion for reargument, the restrained officials, represented by attorneys of the Government, asked that the injunction be clarified so as to be "restricted to enjoining enforcement of the Determination against parties to this proceeding . . . and . . . not be extended to other bidders, not parties to this action, and who, for all that appears, may desire to abide by the Determination." In the same motion, the Government asked that employees who might be irreparably injured be protected by "a bond or other security to pay the minimum wages if the appellants do not eventually succeed in this case."[5] The record discloses no action by the Court of Appeals on this motion or on a subsequent motion to dissolve the temporary injunction.[6] But the temporary injunction, rendering the Act wholly inoperative as to the iron and steel industry was kept in effect and, reversing the District Court, the Court of Appeals, Jus-

[5] Sections of the Public Contracts Act provides that "breach or violation of any of the representations and stipulations in any contract for the purposes set forth . . . shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, . . . a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; . . . Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in Section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered; . . . ."

[6] The Government's motion to clarify and restrict the temporary injunction and for security was filed March 29, 1939; the motion to dissolve the temporary injunction was filed April 13, 1939. No specific consideration of these motions by the Court of Appeals for the District of Columbia is disclosed in the record. August 4, 1939, after argument on the merits, that Court of Appeals, per curiam, Justice Edgerton dissenting, announced that the temporary injunction would be kept in effect, that the judgment of the District Court would be reversed and that the grounds for enjoining the administration of the Act would be set out in an opinion "to be filed shortly." The opinion of the Court of Appeals came down October 3, 1939; Justice Edgerton filed a separate opinion in dissent.

tice Edgerton again dissenting, remanded with instructions that relief as prayed in the bill be granted.[7]

In our judgment the action of the Court of Appeals for the District of Columbia goes beyond any controversy that might have existed between the complaining companies and the Government officials. The benefits of its injunction, and of that ordered by it, were not limited to the potential bidders in the "locality", however construed, in which the respondents do business. All Government officials with duties to perform under the Public Contracts Act have been restrained from applying the wage determination of the Secretary to bidders throughout the Nation who were not parties to any proceeding, who were not before the court and who had sought no relief.

As a result of this judicial action, Federal officials had no feasible alternative except to make contracts for imperatively needed supplies for the War and Navy Departments without inclusion of the stipulation which Congress had required. The Public Contracts Act, so far as the steel industry is concerned, has been suspended for more than a year, with no bond or security to protect the public's interest in the maintenance of wage standards contemplated by Congress, should the suspension ultimately appear unwarranted or unauthorized. Here, and below, the Government has challenged the right of the judiciary to take such action, alleging that it constitutes an unwarranted interference with deliberate legislative policy and with executive administration vital to the achievement of governmental ends, at the instance of parties whose rights the Government has not invaded and who have no standing in court to attack the Secretary's determination. The manifestly far-reaching importance of the questions thus raised prompted us to grant certiorari.[8]

Of the six "localities" into which the Secretary's determination divided the steel industry, respondents do business in that consisting of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, the District of Columbia, and a part of West Virginia.[9] Their stated grievance was that the

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[7] 107 F. (2d) 627.

[8] — U. S. —.

[9] The remaining five localities are: 1, Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, Virginia, and a part of West Virginia; 2, Washington, Oregon and

construction given to the term "locality" by the Secretary amounted to "a plain error of law in interpreting the Act, . . . and, consequently, in purporting . . . to determine the prevailing minimum wages for persons employed in the manufacture . . . . of the iron and steel industry in the six so-called 'localities' set forth in this determination [the Secretary] acted arbitrarily and capriciously and wholly without warrant or authority in law." In particular, the complaint alleged—

Respondents had been selling their products to agents of the United States for many years; they wished to continue to bid on Government contracts; their minimum wages had ranged from 53¢ to 56½¢ per hour; if required to pay the 62½¢ per hour minimum rate determined by the Secretary there was grave danger that they would be unable successfully to compete with others for Government contracts; they had a legal right to bid for Government contracts free from any obligation to abide by the minimum wage determination because of alleged illegal administrative construction of "locality"; and if denied the right to bid without paying their employees this minimum wage they would suffer "irreparable and irrecoverable damages" for which the law provided no "plain adequate or complete remedy."

In staying the effect of the administrative wage determination, the Court of Appeals for the District was of the opinion that "the word locality is one of somewhat indefinite meaning" requiring the Secretary to exercise judgment and discretion "within the proper limits of the meaning of locality", but held that the Secretary's determination in this case went "so far beyond any possible proper application of the words as to defeat its meaning and to constitute an attempt arbitrarily to disregard the statutory mandate."

We are of opinion that no legal rights of respondents were shown to have been invaded or threatened in the complaint upon which the injunction of the Court of Appeals was based. It is by now clear that neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of consti-

California; 3, Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado and Arizona; 4, North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri and the area in and about East Saint Louis, Illinois; 5, Wisconsin, Illinois (except the area in and about East Saint Louis, Illinois), Michigan and Indiana.

tutional legislation recognizing it as such.[10] It is not enough that the Secretary of Labor is charged with an erroneous interpretation of the term "locality" as an element in her wage determination. Nor can respondents vindicate any general interest which the public may have in the construction of the Act by the Secretary and which must be left to the political process. Respondents, to have standing in court, must show an injury or threat to a particular right of their own, as distinguished from the public's interest in the administration of the law.[11] They claim a standing by asserting that they have particular rights under and even apart from statute to bid and negotiate for Government contracts free from compliance with the determination made by the Secretary of Labor for their industry. Respondents point to Section 3709 of the Revised Statutes and to the Public Contracts Act itself.

Section 3709 of the Revised Statutes requires for the Government's benefit that its contracts be made after public advertising.[12] It was not enacted for the protection of sellers and confers no enforceable rights upon prospective bidders.[13] "The United States needs the protection of publicity, form, regularity of returns and affidavit (Revised Stats., §§ 3709, 3718-3724, 3745-3747), in order to prevent possible frauds upon it by others. A private person needs no such protection against a written undertaking signed by himself. The duty is imposed upon the officers of the Government and not upon him."[14] That duty is owing to the Government and to no one else.

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[10] Tennessee Electric Power Co. *v.* Tennessee Valley Authority, 306 U. S. 118, 137-8; Alabama Power Co. *v.* Ickes, 302 U. S. 464; Massachusetts *v.* Mellon, 262 U. S. 447.

[11] Stearns *v.* Wood, 236 U. S. 75, 78; Fairchild *v.* Hughes, 258 U. S. 126, 129.

[12] R. S. 3709 (41 U. S. C. 5) provides: "Except as otherwise provided by law all purchases and contracts for supplies or services, in any of the departments of the Government, and purchases of Indian supplies, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals."

[13] Cf. Goldberg *v.* Daniels, 231 U. S. 218.

[14] United States *v.* New York and P. R. S. S. Co., 239 U. S. 88, 92, 93; American Smelting and Refining Co. *v.* United States, 259 U. S. 75, 78. Cf. Colorado Paving Co. *v.* Murphy, 78 Fed. 28 (C. C. A. 8th). See 38 Op. Att. Gen. 555, 557. Bidders have not been able to contest the award of contracts as bidders or in their capacity as citizens generally. O'Brien *v.* Carney, 6 Fed. Supp. 761; B. F. Cummings *v.* Burleson, 40 Appellate D. C. 500; Champion C. P. Co. *v.*

Like private individuals and businesses, the Government enjoys the unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases.[15] Acting through its agents as it must of necessity, the Government may for the purpose of keeping its own house in order lay down guide posts by which its agents are to proceed in the procurement of supplies, and which create duties to the Government alone. It has done so in the Public Contracts Act. That Act does not depart from but instead embodies the traditional principle of leaving purchases necessary to the operation of our Government to administration by the executive branch of Government, with adequate range of discretion free from vexatious and dilatory restraints at the suits of prospective or potential sellers. It was not intended to be a bestowal of litigable rights upon those desirous of selling to the Government; it is a self-imposed restraint for violation of which the Government—but not private litigants—can complain. Thus, a wage determination by the Secretary contemplates no controversy between parties and no fixing of private rights; the process of arriving at a wage determination contains no semblance of these elements which go to make up a litigable controversy as our law knows the concept.[16] Courts have never reviewed or supervised the administration of such an executive responsibility even where executive duties "require an interpretation of the law."[17] Judicial restraint of those who administer the Government's purchasing would constitute a break with settled judicial practice and a departure into fields hitherto wisely and happily apportioned by the genius of our polity to the administration of another branch of Government.

This Act's purpose was to impose obligations upon those favored with Government business and to obviate the possibility that any

Joint Committee on Printing, 47 Appellate D. C. 141; cf. Strong v. United States, 6 Court of Claims 135. And the view that bidders have no standing in the courts has been generally recognized by the Comptroller General, the Inter-Departmental Board on Contracts of the Bureau of the Budget as well as the Senate Judiciary Committee. Hearing before the Comm. on the Judiciary, House of Representatives, 71st Cong., 2nd Sess., on H. R. 5568, Serial 4, Part 1, pp. 16-22, 26-27; Senate Report 433, 74th Cong., 1st Sess.

[15] Atkin v. Kansas, 191 U. S. 207; Ellis v. United States, 206 U. S. 246; Heim v. McCall, 239 U. S. 175; cf. Federal Trade Commission v. Raymond Co., 263 U. S. 565.

[16] Norwegian Nitrogen Co. v. United States, 288 U. S. 294, 319, 320.

[17] United States *ex rel.* Dunlap v. Black, 128 U. S. 40, 48; cf. Butte, A. & P. Ry. v. United States, 290 U. S. 127, 136, 142, 143.

part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment. As stated in the Report of the House Committee on the Judiciary on the Bill,[18] "The object of the bill is to require persons having contracts with the Government to conform to certain labor conditions in the performance of the contracts and thus to eliminate the practice under which the Government is compelled to deal with sweat shops."

We find nothing in the Act indicating any intention to abandon a principle acted upon since the Nation's founding under which the legislative and executive departments have exercised complete and final authority to enter into contracts for Government purchases. The Committee Hearings and Reports and the construction of the measure by its sponsors disclose no purpose to invoke judicial supervision over agents chosen by Congress to perform these duties. And Sections 4 and 5 do not subject a wage determination to such review. Provision for hearings and findings by the Secretary with respect to decisions upon breaches of stipulations by contractors, once purchases have been made, is indicative of a lack of intention to create any rights for prospective bidders before a purchase is concluded.

The Act does not represent an exercise by Congress of regulatory power over private business or employment.[19] In this legislation Congress did no more than instruct its agents who were selected and granted final authority to fix the terms and conditions under which the Government will permit goods to be sold to it. The Secretary of Labor is under a duty to observe those instructions just as a purchasing agent of a private corporation must observe those of his principal. In both instances prospective bidders for contracts derive no enforceable rights against the agent for an erroneous interpretation of the principal's authorization. For erroneous construction of his instructions, given for the sole benefit of the principal, the agent is responsible to his principal alone because his misconstruction violates no duty he owes to any but his principal. The Secretary's responsibility is to superior executive and legislative authority. Respondents have no standing in court to enforce that responsibility or to represent the public's interest in the Sec-

[18] House Report No. 2946, 74th Cong., 2nd Sess.

[19] Cf. Ex parte Williams, 277 U. S. 269, 272; Great Northern Ry. Co. v. United States, 277 U. S. 172, 180.

retary's compliance with the Act.[20] That respondents sought to vindicate such a public right or interest is made apparent both by their prayer that the determination be suspended as to the entire steel industry and by the extent of the injunction granted.

The contested action of the restrained officials did not invade private rights in a manner amounting to a tortious violation. On the contrary, respondents in effect seek through judicial action to interfere with the manner in which the Government may dispatch its own internal affairs. And in attempted support of the injunction granted they cite many cases involving contested Government regulation of the conduct of private business.[21] Their cited cases, however, all relate to problems different from those inherent in the imposition of judicial restraint upon agents engaged in the purchase of the Government's own supplies.

The Government can supply its needs by its own manufacturing or by purchase. And Congress can as it always has, either do the purchasing of the Government's goods and supplies itself, or it can entrust its agents with final power to do so and make these agents responsible only to it.[22] Courts should not, where Congress has not done so, subject purchasing agencies of Government to the delays necessarily incident to judicial scrutiny at the instance of potential sellers, which would be contrary to traditional governmental practice and would create a new concept of judicial controversies. A like restraint applied to purchasing by private business would be widely condemned as an intolerable business handicap. It is, as both Congress and the courts have always recognized, essential to the even and expeditious functioning of Government that the administration of the purchasing machinery be unhampered. The Constitution prohibits appropriations for the Army for more than

[20] Cf. General Inv. Co. v. N. Y. Cent. R. R., 271 U. S. 228, 230. See also Note 10.

[21] See, e. g., Utah Fuel Co. v. Coal Comm'n, 305 U. S. 56, 58; Shields v. Utah Idaho Central Railroad Co., 305 U. S. 177; Waite v. Macy, 246 U. S. 606; American School of Magnetic Healing v. McAnnulty, 187 U. S. 94; Gegiow v. Uhl, 239 U. S. 3; Truax v. Raich, 239 U. S. 33; Pierce v. Society of Sisters, 268 U. S. 510.

[22] Great Northern Railway Co. v. United States, 277 U. S. 172, 182; Work v. Rives, 267 U. S. 175; Butte, Anaconda & Pacific Ry. Co. v. United States, 290 U. S. 127; United States v. Babcock, 250 U. S. 328; Louisiana v. McAdoo, 234 U. S. 627; Adams v. Nagle, 303 U. S. 532, 540-1.

two years,[23] and by statute contracts for the purchase of Departmental supplies are in general limited to one year.[24] These prohibitions emphasize the grave importance of leaving the restraint of the Government's purchasing agents to Congress and their executive superiors.

The record here discloses the "confusion and disorder"[25] that can result from the delays necessarily incident to judicial supervision of administrative procedure developed to meet present day needs of Government and capable of operating efficiently and fairly to both private and public interests. In the appropriate words of Mr. Justice Sutherland, "The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained."[26] For more than a year, Cabinet officers and their subordinates have been enjoined from making the Secretary's determination of minimum wages effective. Meanwhile, iron and steel were needed for the Army and Navy. In order that the military program could proceed, the declared policy of the Congress was abandoned under judicial compulsion and contracts without a minimum wage stipulation have been awarded for more than $65,000,000.00 worth of iron and steel products since the injunction issued.[27] If the general law permits prospective bidders to challenge each wage determination of the Secretary in the courts, by a like token all employees affected could obtain judicial review. Such a possibility places in bold relief those conditions which led Congress to proceed in this Act upon the belief, to which we have recently alluded,[28] that "legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."[29]

The case before us makes it fitting to remember that "The interference of the Courts with the performance of the ordinary duties of the executive departments of the Government, would be produc-

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[23] Art. I, Sec. 8, cl. 12.

[24] 41 U. S. C. 13.

[25] Cf. Mr. Chief Justice Taney in Decatur *v.* Paulding, 14 Pet. 497, 516.

[26] Mass. *v.* Mellon, 262 U. S. 447, 487.

[27] Bulletins Nos. 75 to 176, inclusive, of the Division of Public Contracts of the Department of Labor.

[28] Federal Communications Commission *v.* Pottsville Broadcasting Co., — U. S. —, —.

[29] Missouri, Kansas & Texas Ry. Co. *v.* May, 194 U. S. 267, 270.

tive of nothing but mischief; and we are quite satisfied that such a power was never intended to be given to them.''[30]

The District Court properly dismissed the bill and the Circuit Court of Appeals for the District of Columbia was in error in finding respondents with standing to bring this action, in ordering the Secretary's determination restrained and in holding respondents entitled to declaratory judgment.[31]

Our decision that the complaining companies lack standing to sue does not rest upon a mere formality. We rest it upon reasons deeply rooted in the constitutional divisions of authority in our system of Government and the impropriety of judicial interpretations of law at the instance of those who show no more than a mere possible injury to the public. The judgment of the Court of Appeals is reversed, and that of the District Court dismissing the bill is affirmed.

Reversed.

Mr. Justice McREYNOLDS is of opinion that the challenged judgment should be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[30] Decatur *v.* Paulding, *supra*, at 516.

[31] Aetna Life Ins. Co. *v.* Haworth, 300 U. S. 227, 240-1.